

REMARKS

The disclosure was objected to because of a number of informalities. The corrections requested by the examiner have been made by the present amendment, thereby removing cause for objection to the specification.

Claims 1, 15 and 34 stand rejected under 35 U.S.C. 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The examiner argues that it is "not clear how the allocation of securities can be performed based on something that is not known, i.e., the final price." The term "final" has been removed from the claims and replaced by the term "firm." As set forth in the patent application, a bidder makes a bid with a public price and a private firm price. The allocation of securities is based on the firm price in the bid. However, this firm price is concealed from the other auction participants. The allocation of securities is conducted by a computer system. Indeed, the allocation of securities can be handled by a computer system without the involvement of the auction participants who were shielded from the private firm price bids of competing participants. Claim 1 was further amended to include references to the required computer system in order to avoid any issues under § 101. Applicants submit that the claims as currently amended and explained above, distinctly claim the invention and satisfy 35 U.S.C. 112.

Claims 1-5, 12, 15-19, 34, 39, 43-50, 55 and 59-62 stand rejected under 35 U.S.C. 102 (b) as being anticipated by Fisher. In accordance with the claimed invention, bidders are rewarded for anonymously revealing their bids early. Although the firm price of the bid is not revealed, that firm bid is required to be within a predetermined range of the initial price that is revealed to the auction participants. To the extent that Fisher discloses proxy bidding in which a

firm price is not revealed to the participants, Fisher makes no suggestion, disclosure or teaching of an initial price within a predetermined range of the firm price for revealing to the participants. Rather, Fisher only discloses a price high enough so as to be successful. A Dutch auction format is disclosed in Fisher at column 10, lines 40 – 62. Fisher refers at line 42 to the method disclosed in Fig. 7, wherein steps 67 and 69 describe how revealed price of proxy bids are incremented in order to reveal all the successful bids at the current MinWin price. Thus, Fisher fails to disclose the method of Applicants' invention in which an initial price within a predetermined range of the firm price is revealed to the auction participants. Moreover, Applicants' invention further requires that the initial price have an associated bid time stamp. The bid time stamp and the firm price are used in the allocation of securities. There is no disclosure, suggestion or teaching in Fisher of the use of bid time stamps for determining an allocation of securities. For these reasons, Applicants submit that claims 1, 15 and 34 are patentable over Fisher, along with all claims depending therefrom.

Claims are 1-4, 12, 15-18, 34, 39, 43-49, 55 and 59-62 are rejected under 35 USC 102 (b) as being anticipated by "Tips for Buyers" from eBay. The Tips article does not disclose a method for use in the sale of quantities of securities. Indeed, the Tips article specifically states that "proxy bidding is not available for Dutch Auctions." As with Fisher, the Tips article fails to disclose revealing an initial price within a predetermined range of the firm price. Rather, "If someone outbids you, the system immediately ups your bid." Thus, according to Tips the revealed price may be an unlimited amount away from the firm price. Moreover, the winning price is always disclosed. This differs dramatically from Applicants' invention in which the firm prices and the associated time stamps used to allocate securities are not revealed to the other auction participants. Thus, the clearing price can not necessarily be discerned, in accordance

with Applicants' invention, from the revealed initial prices. Tips, on the other hand, discloses a method that continually updates to reveal the winning price level. The notion of an unrevealed firm price within a predetermined range of an initial price is not disclosed, suggested or taught by Tips. For these reasons, the Tips article does not anticipate claims 1, 15 and 34 nor any of the claims depending therefrom. Therefore, these claims should be allowed.

Claims 1-5, 12, 15-19, 34, 39, 43-50, 55 and 59-62 stand rejected under 35 USC 103(a) as being unpatentable over Odom in view of Hambrecht and further in view of Fisher. Odom appears to have little in common with Applicants' invention. In addition to the important missing elements conceded by the examiner, the notion of an associated bid time stamp and a final price within a predetermined range of an initial price are not found in Odom. Hambrecht does not disclose the use of time stamps in providing an allocation of securities. Nor does Hambrecht disclose bidding that includes a final price within a predetermined range of an initial price entitling that final price to the time stamp of the initial price. Likewise, Fisher fails to satisfy the deficiencies of the cited references. Fisher does not disclose the use of bid time stamps for participating in determining an allocation of securities. Given that none of the three cited references disclose, suggest or teach providing an allocation of securities based on bid time stamps in addition to firm prices, claims 1, 15 and 34 and all claims depending therefrom should be allowed.

Applicants further submit new claims 75-81 to more completely cover Applicants' invention. Claim 75 clearly requires "the private price component receives the time stamp of the public price component if the private price component comes within a predetermined range from the public price component." The notion of a predetermined range that determines entitlement to the time stamp of the public price component distinguishes Applicants' invention over the cited

references discussed above. Furthermore, claim 75 requires “basing the clearing price on the private price components and associated time stamps.” As discussed above, the cited references do not make use of time stamps in determining a clearing price. For these and other reasons evident from the language of the new claims, Applicants respectfully request that the new claims be fully considered for allowance in the present application.

For all the foregoing reasons, Applicants submit that the application is in condition for allowance and early notice to that effect is respectfully solicited.

Respectfully submitted,

/Robert M. Asher, # 30,445/

Robert M. Asher
Registration No. 30,445
Attorney for Applicants

BROMBERG & SUNSTEIN LLP
125 Summer Street
Boston, MA 02110-1618
Tel: (617) 443-9292
Fax: (617) 443-0004
02955/00103 769315.1